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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 ACUITY A MUTUAL INSURANCE
COMPANY, a Mutual Insurance
Company,

11 Plaintiff,

12 vs.

13 AAA AIR FILTER CO., INC. a Nevada
14 Corporation, RAUL ELIJIO GONZALEZ;
GABRIEL JARAMILLO, DOES 1 through
15 10, inclusive; and ROE BUSINESS
ENTITIES I through X, inclusive,

16 Defendants.

CASE NO:

**COMPLAINT FOR
DECLARATORY RELIEF**

18 COMES NOW Plaintiff Acuity, A Mutual Insurance Company, (hereinafter
19 "Acuity"), by and through its counsel of record, Michael C. Mills, Esq. of the law firm of
20 Bauman Loewe Witt & Maxwell, and files the following Complaint for Declaratory Relief
21 against Defendants AAA Air Filter Co., Inc. a Nevada Corporation, (hereafter AAA) Raul
22 Elijo Gonzalez (hereafter Gonzalez); Gabriel Jaramillo (hereafter Jaramillo), Does 1
23 through 10, inclusive; and Roe Business Entities I through X, inclusive,

24 **PARTIES**

25 1. Plaintiff Acuity is a mutual insurance company which is organized under the
26 laws of the State of Wisconsin and is authorized to operate in the State of Nevada.

GENERAL ALLEGATIONS

The Allegations In The Underlying Pleadings

8. On January 26, 2024, the underlying complaint was filed in the Eighth Judicial District Court, Clark County, Nevada in Case No. A-24-885900-C.

9. On February 1, 2024, the underlying amended complaint was filed in the Eighth Judicial District Court for Clark County, Nevada. Exhibit 1.

10. Plaintiff's Amended Complaint alleges that a motor vehicle crash happened on or about June 13, 2023.

11. The underlying amended complaint allege that the Plaintiff was operating his vehicle eastbound on Warm Springs Road approaching its intersection with Tomiyasu Lane.

12. At the same time, a truck, owned by the insured AAA and driven by Defendant Gonzalez who was an employee of AAA and was in the course and scope of his employment was westbound approaching the same intersection.

13. The underlying amended complaint alleges that the truck was occupied by Defendant Passenger Jaramillo who was also an employee and was also in the course and scope of his employment with AAA.

14. The underlying amended complaint alleges that Defendant Passenger Jaramillo interfered with Defendant Gonzalez's operation of the truck by punching him.

15. The underlying amended complaint alleges that the driver was under the influence of alcohol and marijuana, that he failed to maintain his lane of travel, he veered into the path of the Plaintiff's vehicle, causing a crash that resulted in the wrongful death of Plaintiff.

The Inception of the Acuity Policy

16. On July 27, 2022, Plaintiff issued to Defendant AAA a Policy of Insurance. The policy period ran through 07/27/2023. Plaintiff Acuity assigned policy number ZA7788. Exhibit 2.

1 17. The policy issued by Acuity included both Business Liability Coverage and
2 Commercial Excess Liability Coverage.

3 18. The policy issued by Acuity did not include Commercial Auto Coverage.

4 19. On information and belief, AAA's Commercial Auto Coverage was provided
5 by Progressive Commercial, underwritten by United Financial Casualty Company with a
6 policy period running from July 27, 2022 – July 27, 2023.

7 20. The underlying amended complaint alleges Negligence as its First Cause of
8 Action as to all Defendants, including negligence per se, negligent entrustment on the
9 part of AAA, as well as negligent hiring, training and supervision of the employees.

10 21. In the Second Cause of Action of the underlying amended complaint,
11 Plaintiffs allege Gross Negligence on the part of the driver and the passenger,
12 including the operation of the vehicle under the influence of intoxicants, in violation of
13 the law.

14 22. The Third Cause of Action alleges wrongful death under NRS 41.085(2).

15 23. The Fourth Cause of Action alleges that Defendant AAA is vicariously liable
16 for the actions of its employees.

17 24. Finally, the Fifth Cause of Action is for loss of consortium by the decedent's
18 spouse.

19 25. The underlying amended complaint prays for recovery of general and
20 special damages as well as punitive damages.

21 26. Acuity was notified of the suit filed by the underlying Plaintiffs against AAA,
22 Gonzalez and Jaramillo.

23 27. On March 8, 2024, Acuity's assigned defense counsel appeared on behalf
24 of AAA, Gonzalez and Jaramillo. Exhibit 3.

25 28. Acuity has incurred attorney's fees and costs in providing AAA, Gonzalez
26 and Jaramillo a defense to the underlying amended complaint.

29. On April 19, 2024, Acuity issued a Reservation of Rights letter to AAA, Gonzalez and Jaramillo reserving its rights under Acuity's insurance policy with AAA and seeking recuperation of the fees and costs incurred in the defense. Exhibit 4.

**FIRST CAUSE OF ACTION
(Declaratory Relief)**

30. Plaintiff incorporates by reference all allegations contained in Paragraphs 1 through 29 of this Complaint.

31. Pursuant to United States Code, Title 28, Section 2201, the Federal Declaratory Judgments Act and Rule 57 of the Federal Rules of Civil Procedure, Declaratory Judgments, Plaintiff Acuity seeks a declaration of the duties, rights and interests of the parties as related to the tender of defense and the duty to indemnify.

32. Plaintiff has been obligated to retain counsel to represent it to prosecute this matter.

33. Plaintiff has incurred attorney's fees and costs in prosecution of this action.

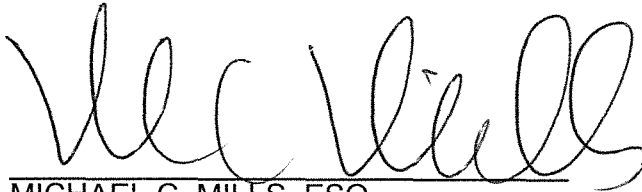
WHEREFORE, Plaintiff Acuity A Mutual Insurance Company expressly reserves the right to amend this Complaint for Declaratory Judgment during discovery and at the time of the trial of the action herein to include all damages not yet ascertained, and prays for declaratory judgment against the Defendants, and each of them, as follows:

1. A declaration that the Acuity policies provide no duty to indemnify Defendants AAA, Gonzalez, or Jaramillo for alleged damages arising from the amended underlying complaint;
2. That Acuity does not have and has never had a duty to defend the Defendants AAA, Gonzalez or Jaramillo in the action brought against them in the underlying amended complaint.
3. That Plaintiff Acuity is entitled to recover the fees and costs it has incurred in defending Defendants AAA, Gonzalez and Jaramillo in an amount to be proved at trial;

- 1 4. A declaration of the court as to the rights, duties and responsibilities of the
- 2 parties in relation to the allegations made in the underlying amended
- 3 complaint;
- 4 5. An award of attorney's fees incurred by Acuity in prosecuting the subject
- 5 action;
- 6 6. Costs of this action; and,
- 7
- 8 7. For such other and further relief as the Court deems just and proper in
- 9 these premises.

10 DATED this 19th day of April, 2024.

11 BAUMAN LOEWE WITT & MAXWELL

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13 MICHAEL C. MILLS, ESQ.

14 Nevada Bar No. 003534

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17 Attorneys for Plaintiff Acuity A Mutual Insurance Company

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INDEX OF EXHIBITS

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- 1** Underlying Amended Complaint.
2 Certified Copy of AAA's Policy with Acuity Effective Date 07-27-22 to Expiration Date 07-27-23.
3 Notice of Appearance
4 Reservation of Rights letter.